UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

RAYMOND P. BOIVIN,	)	
	)	
Plaintiff	)	
	)	
v.	)	Civil 97-CV-176-B
	)	
MARTIN MAGNUSSON, et al.,	)	
	)	
Defendants	)	

ORDER AND MEMORANDUM OF OPINION

BRODY, District Judge

Plaintiff Raymond P. Boivin ("Plaintiff") filed a Complaint alleging violations of 42 U.S.C. § 1983 (1994) and various state law tort claims against Hildane Polky and four other correctional officials arising out of incidents occurring on or about April 10-11, 1997 at the Maine Correctional Institution-Warren ("MCI-Warren"), including Plaintiff's placement in a restraint chair for over eight hours.[1] On June 16, 1998, the Court granted summary judgment to all defendants on Plaintiff's state tort law claims.

Before the Court is Plaintiff's Motion for Summary Judgment as to the § 1983 claims against Polky only and Polky's Cross-Motion for Summary Judgment. For the reasons stated below, the Court DENIES Plaintiff's Motion for Summary Judgment and GRANTS IN PART AND DENIES IN PART Polky's Cross-Motion for Summary Judgment.

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[1] Plaintiff's original Complaint named Commissioner of Corrections Martin Magnusson ("Magnusson"), Warden Jeff Merrill ("Merrill"), Deputy Warden Nelson Riley ("Riley"), and correctional officers Hildane Polky, John Kinghorn ("Kinghorn"), Scott Plaisted ("Plaisted"), and Rick Ivey ("Ivey") as Defendants. On June 16, 1998, the Court dismissed the claims against Magnusson, Merrill, and Riley. On July 21, 1998, Plaintiff was permitted to file an Amended Complaint naming James O'Farrell ("O'Farrell"), chief criminal investigator for the Maine Department of Corrections, as a defendant.

I. SUMMARY JUDGMENT

Summary judgment is appropriate in the absence of a genuine issue as to any material fact and when the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). An issue is genuine for these purposes if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A material fact is one that has "the potential to affect the outcome of the suit under the applicable law." Nereida-Gonzalez v. Tirado-Delgado, 990 F.2d 701, 703 (1st Cir. 1993). Facts may be drawn from "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affadavits." Fed.R.Civ.P. 56(c). For the purposes of summary judgment the Court views the record in the light most favorable to the nonmoving party. See McCarthy v. Northwest Airlines, Inc., 56 F.3d 313, 315 (1st Cir. 1995).

II. BACKGROUND

On April 10-11, 1997, Plaintiff was an inmate at MCI-Warren. At approximately 11:45 P.M. on April 10, an inmate in the cell next to Plaintiff's started a fire. Because of the resulting smoke, prison guards evacuated a number of inmates, including Plaintiff, to outdoor individual exercise pens at approximately 11:55 P.M. Once outside, Plaintiff expressed to one or more guards that he was experiencing breathing difficulties. Ivey and an Officer Champagne ("Champagne") were assigned to bring Plaintiff to the Medical Department.

An altercation between Plaintiff and the two guards occurred at some point on the way to the Medical Department. The cause of this incident is disputed by the parties. According to Plaintiff, as the two guards escorted him, Ivey intentionally pushed his thumb into Plaintiff's arm in an effort to cause Plaintiff pain. When Plaintiff jerked his arm in reaction to the pain, Ivey and

Champagne seized on this as a pretext to trip and push Plaintiff face down onto the cement floor. Guards in the vicinity of the scene rushed over and piled on top of Plaintiff. The guards then picked Plaintiff up and carried him through several passageways into the Receiving Area.

In contrast, Polky ("Defendant") asserts that while being escorted to the nurse's area, Plaintiff tried to break away from Ivey and the other guard and then fought with officers as they attempted to restrain him.

Once in the Receiving Area, guards removed Plaintiff's clothes and placed him in a "restraint chair." A "restraint chair" is a mechanical device with a number of adjustable straps used to bind a person. Two straps proceed from the top of each shoulder down across the individual's body to a buckle on the opposite side near the waist, similar to the way a car seatbelt works. Another strap extends across the waist and is locked with a key. Other straps hold the individual's ankles against the base of the chair. The seat of the restraint chair is pitched back at a thirty degree angle in order to keep the individual in the chair by the force of his body weight. The chair has a recess in the rear where the hands of a person handcuffed behind his back can rest. There is no neck support.

A Sergeant Bisonnette ("Bisonnette") made the initial decision to put Plaintiff in the restraint chair at approximately 12:20 A.M. on April 11, 1998. Plaintiff was released from the chair approximately eight hours later, at 8:40 A.M.[2] Correctional officers maintained a written Constant Watch Log from 12:20 A.M. to 8:40 A.M. and documented Plaintiff's time in the

[2] The record does not indicate who ordered that Plaintiff be released from the restraint chair at 8:40 A.M.

restraint chair on videotape from approximately 12:45 A.M. to 8:40 A.M.[3] (Pl.['s] Ex[s]. A, C.) A nurse checked on Plaintiff several times. Both the Constant Watch Log and the videotapes indicate that during the entire time he was in the restraint chair, Plaintiff sat calmly and without incident.

Defendant, who served as Shift Commander that night, was not present when Plaintiff was put in the restraint chair. Kinghorn, who apparently was working as a guard that night, spoke with Defendant shortly after Plaintiff's placement in the restraint chair and told Defendant that Plaintiff had become "unmanageable," "combative," and "uncontrollable." Defendant then approved the decision.

Defendant spoke with Plaintiff once during his eight hours in the restraint chair, at approximately 3:11 A.M. During this conversation, Plaintiff asked to be released from the restraint chair and returned to his cell so that he could sleep, and Defendant refused. Defendant did not otherwise see Plaintiff or review his status to determine whether it was necessary to keep him in the restraint chair. When Defendant's shift ended at 7:00 A.M., he did not brief the incoming Shift Commander on Plaintiff's status.

At 5:25 A.M., O'Farrell came to the Receiving Area and questioned Plaintiff about the fire. Plaintiff asked O'Farrell to have him released from the chair, and O'Farrell refused.

During the eight hours and twenty minutes he was in the restraint chair, Plaintiff was naked and his hands were handcuffed behind his back. With the exception of his head, every part of Plaintiff's body was immobile. Plaintiff asserts that his back, neck, and shoulders ached, that

[3] On the videotapes, Plaintiff is seated facing away from the camera and all conversations are inaudible.

he lost circulation in his legs, and that the angle of the seat caused the weight of his body to drive the handcuffs into his wrists and his back, causing pain. Plaintiff also asserts that he could not sleep while in the restraint chair.

III. DISCUSSION

Plaintiff asserts that Defendant violated his Eighth Amendment and Fourteenth Amendment rights by approving his placement in the restraint chair and by failing to remove him from the restraint chair for over eights hours without adequate justification. Defendant contends the facts do not support a finding that he violated Plaintiff's constitutional rights, and in the alternative, that he is subject to qualified immunity. Before addressing these arguments, the Court must clarify the applicable legal standard.

A. Applicable Legal Standard

The legal standard applicable to Plaintiff's claim is determined in part by his precise detention status. While the Cruel and Unusual Punishments clause of the Eighth Amendment applies to the claims of persons incarcerated by virtue of a criminal conviction, pre-trial detainees' claims of excessive physical force are governed by the due process provisions of the Fourteenth Amendment. See Bell v. Wolfish, 441 U.S. 520, 536 n.16 (1979); Ingraham v. Wright, 430 U.S. 651, 671 n.40 (1977). Thus, if Plaintiff was a pre-trial detainee, the Eighth Amendment is inapplicable to his claims and they will be addressed under the Fourteenth Amendment only.

In his Statement of Material Facts, Plaintiff contends that on the relevant dates, he was a pre-trial detainee awaiting trial in York County Superior Court. (Pl.['s] Statement of Material Facts at 1.) Defendant, on the other hand, asserts that on April 10-11, 1997, Plaintiff was a

convicted felon serving a 45-day unsuspended portion of a 364-day sentence he received on March 6, 1997. Defendant directs the Court to a Cumberland County Superior Court "Judgment and Commitment" form which supports this assertion. (Def.['s] Statement of Material Facts at 1.)

In his Reply Memorandum, Plaintiff does not address Defendant's contention that he was a convicted prisoner, except to say that "[w]hether [Plaintiff] was at the Supermax . . . as a pretrial detainee or as a convicted person serving a sentence is irrelevant to whether the Due Process Clause applies." (Pl.['s] Reply Mem. at 3 n.1) In light of Plaintiff's argument that the Eighth Amendment is implicated in this case, however, the Court must determine Plaintiff's detention status. Because Defendant has presented the Court with evidence indicating that Plaintiff was a convicted felon serving a sentence on April 10-11, 1997, and because Plaintiff has offered no evidence to the contrary, other than a bare assertion, the Court is persuaded that Plaintiff was a convicted prisoner, and not a pre-trial detainee, on the dates this cause of action arose.[4] Thus, Eighth Amendment liability is not foreclosed.

The determination that Plaintiff was a convicted prisoner and not a pretrial detainee does not completely resolve the question of the particular legal standard or standards to be applied, however. Plaintiff takes the position that Polky's conduct violated two distinct constitutional provisions, the Eighth Amendment and the Fourteenth Amendment,[5] and that these Amendments implicate two distinct legal standards, both of which apply to Plaintiff's claims. Defendant, in

[4] Local Rule 56 states that factual assertions shall be "supported by appropriate record citations." D. Me. R. 56.

[5] Plaintiff is asserting a substantive due process claim under the Due Process Clause of the Fourteenth Amendment, not a procedural due process claim.

contrast, contends that where a prisoner asserts a claim of excessive physical force, the Court must apply an Eighth Amendment standard only. Since both parties agree that at the very least an Eighth Amendment standard applies, the Court will first identify the applicable Eighth Amendment standard. The Court will then consider whether a separate Fourteenth Amendment standard applies.

1. Eighth Amendment

The legal standard to be applied to an Eighth Amendment claim varies according to the "kind of conduct against which an Eighth Amendment objection is lodged." Whitley v. Albers, 475 U.S. 312, 320 (1986). The Supreme Court resolved the question of the particular standard to be applied where a plaintiff alleges that prison officials used excessive physical force in Whitley v. Albers, 475 U.S. 312 (1986) and Hudson v. McMillian, 503 U.S. 1 (1992). In Whitley, which involved the claim of a prisoner who had been shot in the leg by prison guards attempting to quell a prison riot, the Court held that "the question whether the measure taken inflicted unnecessary and wanton pain and suffering ultimately turns on 'whether force was applied in a good faith effort to maintain or restore discipline, or maliciously and sadistically for the very purpose of causing harm.'" Whitley, 475 U.S. at 320-21. Eight years later, in Hudson, the Court extended application of the Whitley/Hudson standard to all claims involving allegations that prison officials employed excessive physical force.[6] See Hudson, 503 U.S. at 6-7 (involving

[6] A "deliberate indifference" standard survives in other Eighth Amendment contexts. See Farmer v. Brennan, 511 U.S. 825 (1994) (applying "deliberate indifference" standard to claim of inhumane conditions of confinement), Wilson v. Seiter, 501 U.S. 294, 302-04 (1991) (same), Estelle v. Gamble, 429 U.S. 97, 104 (1976) (applying "deliberate indifference" standard where prison officials failed to attend to prisoner's medical needs).

prisoner's allegations that prison guards beat him).

A majority of recent cases indicate that the alleged improper use of restraints by prison officials is governed by the Whitley "excessive force" standard. See Williams v. Benjamin, 77 F.3d 756, 761 (4th Cir. 1996); Williams v. Burton, 943 F.2d 1572, 1575 (11th Cir. 1991); Stenzel v. Ellis, 916 F.2d 423, 427 (8th Cir. 1990); Price v. Dixon, 961 F. Supp. 894, 897 (E.D.N.C. 1997); Littlewind v. Rayl, 839 F. Supp. 1369, 1372-73 (D.N.D. 1993). But cf. Branham v. Meachum, 77 F.3d 626, 630 (2nd Cir. 1996) (declining to resolve whether restraint of prisoner triggered "conditions of confinement" deliberate indifference standard or "excessive force" Whitley/Hudson standard). Thus, the Court will apply the Whitley/Hudson standard to the allegations presented in this case.

2. Fourteenth Amendment

Having identified the specific Eighth Amendment standard applicable in this case, the Court must evaluate Plaintiff's contention that his claims additionally should be analyzed under a separate Fourteenth Amendment standard. The Due Process Clause of the Fourteenth Amendment recognizes a liberty interest in freedom from bodily restraint which "survives criminal conviction and incarceration . . . [and] . . . involuntary commitment." Youngberg v. Romeo, 457 U.S. 307, 316 (1982). Plaintiff's allegation that he was bound in the restraint chair for over eight hours unquestionably implicates this constitutional provision. After careful consideration, however, the Court is persuaded that although Plaintiff's allegations implicate both the Eighth and the Fourteenth Amendments, his claims should be analyzed solely under an Eighth Amendment standard.

As discussed above, in Whitley, the Supreme Court considered the Eighth and Fourteenth

Amendment claims of a prisoner who had been shot in the leg by prison guards in the midst of a riot. See Whitley, 475 U.S. at 314-16. In the course of its analysis, the Court acknowledged that a single fact pattern might support claims under both the Eighth and the Fourteenth Amendments, see id. at 327, but rejected the plaintiff's Fourteenth Amendment substantive due process claim with the following explanation:

> We think the Eighth Amendment, which is specifically concerned with the unnecessary and wanton infliction of pain in penal institutions, serves as the primary source of substantive protection to convicted prisoners in cases such as this one, where the deliberate use of force is challenged as excessive and unjustified. It would indeed be surprising if, in the context of forceful prison security measures, 'conduct that shocks the conscience' or 'afford[s] brutality the cloak of the law,' and so violates the Fourteenth Amendment, were not also punishment 'inconsistent with contemporary standards of decency' and 'repugnant to the conscience of mankind,' in violation of the Eighth. . . . [We hold] that in these circumstances the Due Process Clause affords respondent no greater protection than does the Cruel and Unusual Punishments Clause.

Id. at 327 (citations omitted).

The Whitley principle was reaffirmed in Graham v. Connor, 490 U.S. 386 (1989), in which the Court held that allegations which implicate specific constitutional provisions should be analyzed under those provisions and not under the more generalized concept of substantive due process. See Graham, 490 U.S. at 392-95. The Court "reject[ed] the notion that all excessive force claims brought under § 1983 are governed by a single generic standard," id. at 393, and specifically held that "all claims that law enforcement officers have used excessive force . . . in the course of an arrest, investigatory stop, or other 'seizure' . . . should be analyzed under the Fourth Amendment and its 'reasonableness' standard, rather than under a [Fourteenth Amendment] 'substantive due process' approach." Id. at 395. In a footnote, the Court cited Whitley and stated that "[a]ny protection that 'substantive due process' affords convicted

prisoners against excessive force is, we have held, at best redundant of that provided by the Eighth Amendment."[7] Id. at 395 n.10.

Numerous Courts of Appeals have relied on Whitley and Graham to find that where prisoners allege the use of excessive physical force by prison officials in violation of both the Eighth and the Fourteenth Amendments, these claims should be analyzed under an Eighth Amendment standard alone. See, e.g., Gravely v. Madden, 142 F.3d 345, 348 (6th Cir. 1998) (noting that in context of excessive force claims brought by convicted prisoners, Eighth Amendment, rather than Fourth or Fourteenth, provides applicable legal standard); Berry v. City of Muskogee, 900 F.2d 1489, 1493 (10th Cir. 1990) (observing that Eighth Amendment standard alone applies to prisoners' allegations of excessive force and failure to protect); Williams v. Boles, 841 F.2d 181, 183 (7th Cir. 1988) (holding, in case of prisoner who was beaten, maced, and manually restrained by guards, that Whitley standard alone applied because "'the Eighth

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[7] One explanation for this conclusion is that the introduction of the Whitley/Hudson standard has rendered the Eighth and Fourteenth Amendment standards in the context of "excessive force" cases virtually identical. The language which serves as the basis of the Whitley standard -- "whether force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm" -- is taken directly from Johnson v. Glick, 481 F.2d 1028, 1033 (2nd Cir. 1973), a case which articulated the factors to be considered under Fourteenth Amendment substantive due process analysis of a prisoner's claim that he was subject to an unprovoked assault by a prison guard. See Hudson, 503 U.S. at 7. Judge Friendly utilized a Fourteenth Amendment standard in Johnson because he deemed a guard's random attack on a prisoner not to qualify as "punishment." See Johnson, 481 F.2d at 1032. Significantly, in the few post-Whitley prisoner cases that have applied separate standards under the Eighth and the Fourteenth Amendments, the common strand seems to be an inability to characterize the alleged conduct as "punishment" within the meaning of the Eighth Amendment. See Leslie v. Doyle, 125 F.3d 1132, 1134-1137 (7th Cir. 1997) (suggesting that substantive due process analysis might be appropriate where plaintiff alleges that prison officials assaulted, framed, or maliciously prosecuted him); Freitas v. Stone, 818 F. Supp. 1333, 1339-40 (D. Haw. 1993) (holding that at least where the allegedly unconstitutional action, such as isolated assault by prison guards, does not constitute "punishment," scope of Fourteenth Amendment liability will exceed scope of Eighth Amendment liability).

Amendment's prohibition against cruel and unusual punishment and any substantive rights . . . under the Due Process Clause are coextensive'").[8] But see McRorie v. Shimoda, 795 F.2d 780, 784-85 (9th Cir. 1986) (evaluating plaintiff's claim that he was assaulted by guard under seemingly distinct Eighth and Fourteenth Amendment standards).

This principle has been reiterated in cases involving the alleged unconstitutional restraint of prisoners. See Williams v. Benjamin, 77 F.3d 756, 768 ("[P]laintiff's substantive Due Process claim adds nothing to his Eighth Amendment claim."); Williams v. Burton, 943 F.2d 1572, 1576 (11th Cir. 1991) ("[t]he decision in the Eighth Amendment context that restraints were not used longer than necessary carries the decision on essentially the same Fourteenth Amendment arguments"); Price v. Dixon, 961 F. Supp. 894, 903 (E.D.N.C. 1997) ("in this situation, the

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[8] See also James v. Alfred, 835 F.2d 605, 607 (5th Cir. 1988) (relying on Whitley to find that where plaintiff's allegations did not give rise to Eighth Amendment claim, they could not give rise to a substantive due process claim); Brown v. Smith, 813 F.2d 1187, 1188 (11th Cir. 1987) (evaluating plaintiff's claim of excessive physical force in violation of Eighth and Fourteenth Amendment claims solely under Whitley Eighth Amendment standard); Pressly v. Hutto, 816 F.2d 977, 979 (4th Cir. 1987) ("[excessive force and failure to protect] claims . . . are most appropriately assessed under the eighth amendment where both that source and the fourteenth amendment are invoked. The two sources provide essentially congruent protection, but the eighth amendment source is the primary one in this context."); Parrish v. Johnson, 800 F.2d 600, 604 n.5 (6th Cir. 1986) (deciding that where prisoner invoked both Eighth Amendment and substantive due process theories, his claim would be considered under Eighth Amendment alone); Rosalie Berger Levinson, *Protection Against Government Abuse of Power: Has the Court Taken the Substance out of Substantive Due Process*, 16 U. Dayton L. Rev. 313, 343 (1991) ("As a practical matter, Whitley eliminated the efficacy of a substantive due process challenge to the mistreatment of prisoners."); Michael J. Phillips, *The Nonprivacy Applications of Substantive Due Process*, 21 Rutgers L.J. 537, 556 (1990) ("After Whitley, although substantive due process occasionally remains an independent factor in this area, eighth amendment standards generally prevail in excessive force cases involving prisoners.").

Although the First Circuit has not squarely addressed this issue, it cited Whitley in the course of noting a district court's decision to treat a complaint alleging violations of both the Eighth and the Fourteenth Amendments as solely presenting an Eighth Amendment claim. See Unwin v. Campbell, 863 F.2d 124, 127 n.1 (1st Cir. 1988).

substantive due process analysis under the Fourteenth Amendment parallels the Eighth Amendment discussions").

In light of the foregoing precedent, the Court is satisfied that while Plaintiff's allegations may give rise to both Eighth and Fourteenth Amendment claims, these claims are to be assessed solely under the Whitley/Hudson Eighth Amendment standard enunciated above.

B. Merits

In order to show an Eighth Amendment violation, Plaintiff must demonstrate that Defendant "inflicted unnecessary and wanton pain and suffering" on him. Whitley, 475 U.S. at 327. Evaluation of an Eight Amendment claim requires analysis of both objective and subjective components. See Williams v. Benjamin, 77 F.3d 756, 761 (4th. Cir. 1996). While the objective component involves an inquiry into the seriousness of the injury inflicted on the prisoner, the subjective component delves into the state of mind of the prison official. See Benjamin, 77 F.3d at 761. Since Defendant does not assert that Plaintiff's alleged injuries fail to satisfy the objective component of this inquiry, the Court's analysis solely focuses on the subjective element.

In order to grant summary judgment to either party, there can be no genuine issue of material fact as to whether "force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm." Whitley, 475 U.S. at 320-21. Factors relevant to this analysis include: the need for the application of force; the relationship between the need and the amount of force that was used; the extent of the injury inflicted; the extent of the threat to the safety of inmates and staff, as reasonably perceived by the responsible officials on the basis of facts known to them; and any efforts made to temper the

severity of the forceful response. See id. at 321. Evaluation of these factors may permit an inference "as to whether the use of force could plausibly have been thought necessary, or instead evinced such wantonness with respect to the unjustified infliction of harm as is tantamount to a knowing willingness to occur." Id.

1. Approval of Plaintiff's Placement in the Restraint Chair

It is undisputed that the use of the restraint chair at MCI-Warren "shall be limited to those situations when it is apparent that the client presents a real and immediate threat to the safety of the client or others or the security of the facility, and only when no other reasonable alternative exists." (Pl.['s] Ex. B.) Plaintiff argues that the Court should determine as a matter of law that Defendant violated his constitutional rights when Defendant approved Plaintiff's placement in the restraint chair without investigating whether Plaintiff posed a "real and immediate threat" and therefore whether such a measure was necessary. Rather, Plaintiff alleges, Defendant merely "rubber-stamped" Bisonnette's decision based on Kinghorn's after-the-fact conclusory statements about Plaintiff's behavior, and did not consider the reasonable alternatives of returning Plaintiff to an outdoor individual exercise pen or, after the facility was "secure" in the wake of the fire, to his cell.[9] According to Plaintiff, the fact that Defendant had no actual knowledge of facts indicating that Plaintiff posed a "real and immediate threat" to anyone supports an inference that Defendant acted with malice.

Defendant first contends that Plaintiff's claim regarding his initial placement in the

[9] Policy 10.5(B)(1) of the Maine Department of Corrections Policy and Procedures states that "[t]he Warden, Deputy Warden, Chief of Security, Shift Commander or health care personnel may authorize the use of mechanical restrains when it is apparent that a prisoner poses a real and immediate threat to his self [sic] or others or the security of the facility." (Pl.['s] Ex. B.) Sergeant Bisonnette, who made the initial decision to place Plaintiff in the restraint chair, apparently did not carry any of these titles on the night in question.

restraint chair is not properly before the Court because Plaintiff did not assert such a claim in either his original or his Amended Complaint. However, "[p]laintiffs proceeding pro se are entitled to special latitude in the construction of their pleadings." Glidden v. Atkinson, 750 F. Supp. 25, 26 (D. Me. 1990). Given that Plaintiff was proceeding pro se when he drafted his original Complaint, and given that the Complaint references being put into the restraint chair, the Court concludes that Plaintiff has satisfied the minimum requirements of notice pleading.

In the alternative, Defendant argues that the Court should grant summary judgment in his favor on this claim because his decision to trust the judgment of Bisonnette and Kinghorn cannot be construed as malicious or sadistic. Defendant asserts that he did not have time to go into detail with Sergeant Kinghorn, and that he trusted the judgment of both Bisonnette and Kinghorn, each of whom served as Shift Commander two to three nights a week and made restraint chair decisions in that capacity. In addition, Defendant asserts that when serving as Shift Commander, he routinely delegated to Bisonnette and Kinghorn decisions regarding how to handle disruptive inmates, including whether or not to use the restraint chair. In assessing their decisionmaking, Defendant found their judgment to be appropriate.[10]

While Plaintiff's allegations may raise a genuine issue of material fact as to whether Bisonnette was justified in placing Plaintiff in the restraint chair at 12:20 A.M., the issue before

[10] Defendant also asserts that at some later point that night, he was told that Plaintiff had tried to break away from Ivey and Champagne and then fought with officers as they attempted to restrain him. Based on this information, Defendant claims, he then independently determined that the decision to restrain Plaintiff was appropriate because Plaintiff's behavior indicated that he posed a real and immediate threat to the safety of himself and others and to the security of the facility, and no reasonable alternative to the restraint chair existed. Defendant contends that returning Plaintiff to an individual exercise pen was not a reasonable alternative because he could not be managed in that environment, and because he could have incited other inmates in the pens to become disruptive, thereby increasing the threat to inmates, officers, and the security of the facility.

the Court is whether, under the circumstances, Defendant violated Plaintiff's constitutional rights by relying on the judgment of Bisonnette and on the oral reports of Kinghorn in approving Bisonnette's decision. The focus of this inquiry is whether the evidence supports an inference that Defendant wantonly punished Plaintiff. See Williams v. Benjamin, 77 F.3d 756, 763-64 (4th Cir. 1996). On the basis of the undisputed facts, the Court concludes that it does not.

It is undisputed that Defendant was told, albeit after-the-fact, that Plaintiff had become "unmanageable," "combative," and "uncontrollable." Even if Plaintiff's version of the events leading up to his placement in the restraint chair is the correct one, the evidence simply does not indicate that Defendant's approval of Plaintiff's placement in the restraint chair was done so wantonly as to support an inference of malice. Plaintiff does not assert that Defendant had any reason to distrust the actions or statements of Bisonnette or Kinghorn, nor does Plaintiff suggest that Defendant ignored evidence contradicting Kinghorn's statements. In essence, Plaintiff appears to argue that Defendant had an obligation to hear Plaintiff's "side of the story" before approving the use of the restraint chair, or that Defendant simply could never approve a restraint chair decision made by an officer who was technically unauthorized to take such action in the first place. To adopt such arguments, however, would be to undermine the necessary "discretion" held by prison officials in the context of "internal security" matters. Whitley, 475 U.S. at 321.

The Court is satisfied that, based on the information Defendant undisputedly had, regardless of its ultimate accuracy, no reasonable jury could conclude that Defendant acted with malice in approving Plaintiff's placement in the restraint chair. To the contrary, the evidence supports Defendant's assertion that he had reason to believe that Plaintiff posed a threat to the

safety of inmates and staff, that the application of force was necessary, and that use of the restraint chair was an appropriate exercise of that force. As a result, the Court grants Defendant's Cross-Motion for Summary Judgment as to this claim.

2. Failure to Remove Plaintiff from the Restraint Chair

Plaintiff next urges the Court to find as a matter of law that Defendant's failure to remove him from the restraint chair for over eight hours violated his constitutional rights. While Plaintiff primarily focuses on Defendant's decision at approximately 3:15 A.M. not to release Plaintiff from the restraint chair, he also notes that Defendant failed to review the necessity of restraining Plaintiff every two hours, failed to brief the Shift Commander who replaced him at 7:00 A.M. on Plaintiff's status, and failed to document in writing the reasons for Plaintiff's placement in the restraint chair. These omissions constitute violations of Policies 10.5(D)(1), 10.5(F)(3), and 10.5(F)(1)(c) of the Maine Department of Corrections Policy and Procedures.

In support of his claim, Plaintiff directs the Court to the videotape evidence documenting his calm demeanor and to the Constant Watch Log, which repeatedly notes that Plaintiff was "sitting quietly." (Pl.['s] Ex. C, A.) These two pieces of evidence indicate that Plaintiff sat peacefully and without incident throughout the entire period he was in the restraint chair, and support Plaintiff's contention that Defendant could not plausibly have considered Plaintiff to pose a threat to anyone or anything.[11] Plaintiff also argues that reasonable alternatives to the restraint chair existed, including being returned to an individual exercise pen or to his cell. Plaintiff contends that under these circumstances, Defendant's decision to leave Plaintiff in the restraint chair supports an inference of malice.

[11] Policy 10.5(D)(4) provides that "[r]estraints are to be removed as soon as the behavior that poses a threat has been brought under control and no longer poses a threat." (Pl.['s] Ex. B.)

Defendant, in contrast, contends that the record supports a grant of summary judgment in his favor because Plaintiff cannot point to any facts supporting an inference that Polky's action or inaction was motivated by malice. First, Defendant asserts that his 3:15 A.M. decision not to release Plaintiff from the restraint chair was based on his belief that if released, Plaintiff would misbehave in such a way as to threaten himself, others, and the security of the facility. According to Defendant, a number of factors led him to this conclusion: (i) Defendant believed that Plaintiff had conspired with another inmate to set the fire and to hurt or kill prison officers; (ii) Defendant believed that Plaintiff's earlier conduct was part of a strategy to get himself to the Receiving Area, where the inmate who had started the earlier fire had been taken; (iii) Plaintiff had a tendency to induce confrontations with prison staff, feign calming down upon being restrained, and then "act up" again; (iv) Defendant suspected that Plaintiff would attempt to "show off" in front of fire and correctional personnel present at the facility; and (v) Defendant interpreted Plaintiff's body language and speech patterns during the conversation, including a failure to maintain eye contact, to indicate that Plaintiff was not being truthful when he said he would not misbehave again. Defendant does not contend that Plaintiff, once restrained, did anything that required an application of force, nor does Defendant assert that Plaintiff verbally assaulted or threatened prison officials.

Second, Defendant contends that his departures from established prison procedures were justified and in no way constitute evidence of malice. Defendant claims that he had extra duties related to the fire and its consequences and that he checked on Plaintiff as soon as he was able. In addition, Defendant claims that after his 3:11 A.M. conversation with Plaintiff, he was assigned to other duties and relieved of responsibility relating to Plaintiff, and therefore, he

thought that other prison supervisors would check on Plaintiff and brief the next Shift Commander.[12]

While courts should defer to the good judgment of prison officials regarding the length of time a restraint mechanism may be employed, "[d]eference to prison officials does not give them constitutional license to torture inmates." Williams v. Benjamin, 77 F.3d 756, 765 (4th Cir. 1996) (denying defendant's motion for summary judgment in part where inmate was held in four-point restraints for eight hours and was not permitted to wash mace off face, use toilet, or receive medical attention during that time). Violations of internal policies do not establish the existence of a constitutional violation, but such violations may support an inference that a prison official acted with a culpable state of mind. See Benjamin, 77 F.3d at 766.

With these principles in mind, the Court is persuaded that genuine issues of material fact exist as to Defendant's reasons for failing to release Plaintiff from the restraint chair and therefore preclude a grant of summary judgment to either party. Although Defendant has presented a number of security-related reasons for keeping Plaintiff in the restraint chair, Plaintiff has raised questions about the truthfulness of several of these asserted justifications. For example, while Defendant's Affadavit references a belief that Plaintiff had conspired with another inmate to set the fire and to harm prison officers (Polky Aff. ¶ 5.), Defendant testified at his deposition that he did not believe Plaintiff was responsible for the fire. (Polky Dep. at 33.)

In addition, Defendant's asserted suspicion that Plaintiff had plotted to get himself to the Receiving Area in anticipation of joining another inmate supports an inference not only that

[12] Defendant also asserts that at no relevant time did Plaintiff or the nurse on duty communicate to him that Plaintiff needed to be removed from the restraint chair for a medical reason, including pain. Nor, according to Defendant, did Plaintiff appear to be in pain when he spoke with him.

Plaintiff might have posed a "real and immediate threat" to prison security, but also that Defendant intended to "punish" Plaintiff for this alleged "plot." It is never constitutionally permissible to use restraints to punish a prisoner.[13] See Benjamin, 77 F.3d at 765; Williams v. Vidor, 17 F.3d 857, 863 (6th Cir. 1994) (Jones, J., concurring in part and dissenting in part); Moreover, if Defendant's concern was that Plaintiff would act in concert with the other inmate to cause a disruption in the Receiving Area, the record indicates that this concern could only have been short-lived: the inmate was transported to a hospital at 12:47 A.M., less than one half-hour after Plaintiff was placed in the restraint chair. (Polky Dep. Ex. 1.)

Finally, Plaintiff challenges Defendant's allegation that Plaintiff's body language and speech patterns during their 3:11 A.M. conversation betrayed an intention to agitate again. While the videotapes do not facilitate an effective assessment of this issue, given that every portion of Plaintiff's body was bound except for his head, the Court concludes that a genuine issue of material fact exists as to what body language Plaintiff exhibited under those conditions. If Defendant is solely referring to a failure to maintain eye contact and to Plaintiff's choice of words, alternative explanations for this conduct exist, including the respective physical positions of the two men and the fact that Plaintiff had not slept at all that night.

Because factual questions exist as to Defendant's state of mind, the Court is unable determine as a matter of law that Defendant's conduct was undertaken "maliciously and sadistically for the very purpose of causing harm," nor is it able to decide as a matter of law that Defendant's actions were part of a "good faith effort to maintain or restore discipline." As a result, the Court denies both Plaintiff's Motion for Summary Judgment and Defendant's Motion

[13] This principle is echoed in Policy 10.5(A)(4): "Mechanical restraints shall never be used to punish or discipline a prisoner." (Pl.['s] Ex. B.)

for Summary Judgment as to this claim.

C. Qualified Immunity

Since the Court has determined that Plaintiff cannot sustain a claim relating to his initial placement in the restraint chair, the Court will address the issue of qualified immunity only as it relates to Defendant's failure to remove Plaintiff from the restraint chair for over eight hours. Qualified immunity analysis is two-fold: (i) has the plaintiff alleged the violation of a clearly established right, and (ii) should a reasonable, similarly situated official have understood that the challenged conduct violated a clearly established right? See Swain v. Spinney, 117 F.3d 1, 9 (1st Cir. 1997); Comfort v. Town of Pittsfield, 924 F. Supp. 1219, 1227 (D. Me. 1996).

The above test reflects the Supreme Court's embrace of an objective qualified immunity standard. See Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). Prior to Harlow, qualified immunity analysis rested on both objective and subjective components: a plaintiff could defeat a claim of qualified immunity if he showed that the defendant reasonably knew or should have known that his actions violated the plaintiff's constitutional rights, or if he showed that the defendant acted maliciously to cause a constitutional deprivation. See Wood v. Strickland, 420 U.S. 308, 322 (1975).

Application of the Harlow standard to cases like the one at bar, where the defendant's subjective mental state is an element of the claimed constitutional violation, presents difficulties: how can a court determine that a prison official acted with deliberate indifference or malice in applying unconstitutional excessive force, and yet simultaneously conclude that it was objectively reasonable for the official to believe that his conduct did not amount to a constitutional deprivation? See McMillian v. Johnson, 101 F.3d 1363, 1366-69 (11th Cir. 1996)

(Probst, J., concurring) ("I find it difficult to see how [claims involving subjective intent] can be determined at the summary judgment stage [based on qualified immunity] if there is any substantial evidence of an illegal motive"); Koch v. Ricketts, 82 F.3d 317, 319 (9th Cir. 1996) (holding inconsistent jury verdict finding that guards had violated Eighth Amendment under "deliberate indifference" standard, but were entitled to qualified immunity); Bates v. Jean, 745 F.2d 1146, 1152 (7th Cir. 1984) (holding inconsistent special verdict finding prison official's conduct to be "shocking," "callous," and "brutal," but also shielded by qualified immunity); Albers v. Whitley, 743 F.2d 1372, 1376 (9th Cir. 1984) ("A finding of deliberate indifference is inconsistent with a finding of good faith or qualified immunity."), rev'd on other grounds, 475 U.S. 312 (1986).

The Court is persuaded that, in this case, the existence of genuine issues of material fact as to whether Defendant acted with malice precludes a finding of qualified immunity. See Hill v. Shelander, 992 F.2d 714, 717 (7th Cir. 1993) (upholding district court's denial of qualified immunity under Whitley/Hudson standard where factual dispute existed as to whether defendant acted with malice when he physically assaulted prisoner); Elliot v. Cheshire County, 940 F.2d 7, 11-12 (1st Cir. 1991) (partially vacating grant of summary judgment to defendants based on qualified immunity where plaintiff raised genuine issue of material fact as to defendants' "deliberate indifference"); Rosen v. Chang, 811 F. Supp. 754, 760-61 (D.R.I. 1993) (declining to extend qualified immunity where factual questions existed as to defendants' alleged "deliberate indifference").

IV. CONCLUSION

For the reasons discussed above, the Court DENIES Plaintiff's Motion for Summary

Judgment, GRANTS Defendant's Cross-Motion for Summary Judgment as to Defendant's authorization of Plaintiff's placement in the restraint chair and DENIES Defendant's Cross-Motion for Summary Judgment as to Defendant's failure to remove Plaintiff from the restraint chair.

SO ORDERED.

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MORTON A. BRODY
United States District Judge

Dated this 22nd day of December, 1998.